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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/14/2001

Steven C. Fustolo

FUST-1

4531

7590

05/20/2004

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EXAMINER

SAADAT, CAMERON

ART UNIT

PAPER NUMBER

3713

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/808,515		FUSTOLO, STEVEN C.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Cameron Saadat		3713	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/26/2004 has been entered. Claims 1-32 are pending in this application.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The antecedent basis for "said time limit" has not been clearly set forth.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 5-10, 13-17, 20-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon et al. (USPN 6,678,824; hereinafter Cannon) in view of Pellegrino et al. (U.S. Patent No. 6,149,441; hereinafter Pellegrino).**

Regarding claims 1 and 32, Cannon discloses a system and method for providing an educational program to a participant (see Fig 2, spelling bee); and a prompting means for prompting the participant for a response during the educational program to verify that the participant actively works through said educational program, said prompting means terminating the educational program when the response is inadequate; wherein program credit is awarded based on viewing the education program rather than passing specific examinations (Col. 4, lines 12-18, 38-42). Cannon discloses all of the claimed subject matter with the exception of explicitly disclosing that the educational program is distributed over a network to a remote location. However, Pellegrino discloses a system and method for delivering an educational program to a participant at a remote site, comprising a server computer 20 having educational program software for delivering the educational program to a client computer 21 connected to the server computer over a network. Hence, in view of Pellegrino, it would have been obvious to one of ordinary skill in the art to modify the educational program described in Cannon, by allowing a user to access the

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educational program from a remote location, over a network, in order to overcome geographical limitations, thereby providing access to multiple students residing in various geographical locations.

Regarding claim 5, Cannon discloses a system, wherein the prompting occurs at a prescribed time (Col. 4, lines 11-18).

Regarding claims 6 and 7, Cannon discloses a system, (as per claim 6) wherein the client computer is a non-pc computer system (Col. 3, lines 40-41). Although the combination of Cannon and Pellegrino does not explicitly disclose that the client computer is a Web TV computer system (as per claim 7), it is the examiner's position that these computing systems are analogous and thereby provide no criticality with respect to the invention.

Regarding claims 8-10, Cannon discloses a system, wherein the response to the prompting means is (as per claim 8) a mouse click, (as per claim 10) a depression of a key on a keyboard (Col. 4, line 14). Although Cannon does not explicitly disclose a TV remote as an input means, it is the examiner's position that Web TV computing systems and their input devices are notoriously well known in the art as an alternative to personal computers, and it would have been an obvious matter of design choice as to the input device for responding to a prompt, wherein no stated problem is solved or unexpected result is obtained by prescribing a TV remote.

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Regarding claims 13-14, Cannon discloses a system wherein a student is prompted to respond every 60 seconds (Col. 4, lines 12-18). Cannon does not explicitly state that the prompting occurs every 30 seconds. However, it would have been an obvious matter of design choice as to the predetermined time interval between prompts, wherein no stated problem is solved or unexpected result is obtained by prescribing 30 seconds.

Regarding claim 15, Cannon discloses a system wherein the prompting includes at least one prompt over a two-hour period (Col. 4, lines 12-18).

Regarding claims 16 and 17, Cannon discloses a system wherein the client computer comprises a verification storage component (Col. 5, lines 55-57). Cannon does not explicitly disclose a verification storage component at the server. However, Pellegrino discloses a method for delivering an educational program to a participant at a remote site, comprising a server computer 20 having educational program software for delivering the educational program to a client computer 21, (as per claim 16) wherein the server comprises a verification storage component 71, and (as per claim 17) stores personal identification information of a participant with initials (Col. 27, line 22). Thus, in view of Pellegrino, it would have been obvious to one of ordinary skill in the art to modify the verification storage component described in Cannon, by providing the verification storage component in a server, in order to overcome geographical limitations, thereby providing access to multiple students residing in various geographical locations.

Regarding claim 20, Cannon discloses a system further comprising a clock means to track a duration of the educational program played at a viewing speed (See Fig. 1, ref. 114).

Regarding claim 21, Cannon discloses a system wherein the duration includes said educational program played at a viewing speed (See Fig. 1, ref. 114 real time).

Regarding claim 22, Cannon discloses a system wherein the clock means tracks a total duration of the educational program viewed by the participant, the total duration including a sum

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of duration of each of a multiply viewed segment of the educational program (see Fig. 2; Fig. 3, ref. 422).

Regarding claim 23, the combination of Cannon and Pellegrino further discloses a system wherein the network is the Internet 26 (see Pellegrino).

Regarding claims 24 and 25, Cannon discloses a system wherein the client computer includes a standard web browser software (See Fig. 2).

Regarding claims 26 and 27, Cannon discloses a system wherein at least a portion of the education program is stored on storage means at the client computer (Col. 2, lines 8-14).

Regarding claim 28, Cannon discloses all of the claimed subject matter with the exception of explicitly disclosing that the educational program is controlled over a network by an educational program software of a server computer. However, Pellegrino discloses a system and method for delivering an educational program to a participant at a remote site, comprising a server computer 20 having educational program software for delivering the educational program to a client computer 21 connected to the server computer over a network. Hence, in view of Pellegrino, it would have been obvious to one of ordinary skill in the art to modify the educational program described in Cannon, by controlling the educational program with software of a server computer, in order to overcome geographical limitations, thereby providing access to multiple students residing in various geographical locations.

Regarding claims 29-31, the combination of Cannon and Pellegrino discloses a system wherein the storage means is a CD-ROM or magnetic tape. Although Pellegrino does not explicitly specify a DVD as a means of storage, it is the examiner's position that these storage means are old and well known. Hence, it would have been obvious to a person of ordinary skill in the art to modify the CD-ROM storage means described in the combination of Cannon and Pellegrino, by providing a DVD storage means in order to store more information.

Claims 2-4, 11-12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon et al. (USPN 6,678,824; hereinafter Cannon) in view of Pellegrino et al. (U.S. Patent No. 6,149,441; hereinafter Pellegrino) further in view of DeLaHuerger (U.S. Patent Application Publication 2002/0116509 A1).

Regarding claims 11-12 and 18, Cannon discloses a prompting means *before* the educational program that requires a response comprising personal information of a participant. The combination of Cannon and Pellegrino discloses all of the claimed subject matter with the exception of explicitly disclosing the feature of prompting the participant for a *personal response during* the educational program. However, DeLaHuerger discloses an information system network for delivering information to a participant at a remote site, wherein the participant is prompted for a proper *personal response* during use of the information system to avoid termination of access (Page 13, paragraph 0166). Thus, in view of DeLaHuerger, it would be obvious to modify the prompting means described in the combination of Cannon and Pellegrino, by prompting the participant for a *personal response* during a computerized informational session, in order to further protect a computer terminal in the situation where the authorized participant logs onto a terminal and leaves the terminal momentarily, and wherein continuous prompting for a proper response during the use of the information system would thwart an unauthorized user from accessing the terminal under the guise of the authorized participant (see DeLaHuerger, page 8, paragraph 0088).

Regarding claims 2-4, Cannon discloses all of the claimed subject matter with the exception of explicitly disclosing that the prompting has a randomness factor. However, DeLaHuerger discloses an information system network for delivering information to a participant at a remote site, wherein the participant is *randomly* prompted for a response during use of the information system to avoid termination of access (Page 13, paragraph 0166). Thus, in view of DeLaHuerger, it would be obvious to modify the prompting means described in the combination of Cannon and Pellegrino, by *randomly*



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prompting the participant, in order to further protect a computer terminal in the situation where the authorized participant logs onto a terminal and leaves the terminal momentarily, and wherein continuous, random prompting for a proper response during the use of the information system would thwart an unauthorized user from accessing the terminal under the guise of the authorized participant (see DeLaHuerga, page 8, paragraph 0088).

**Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon et al. (USPN 6,678,824; hereinafter Cannon) in view of Pellegrino et al. (U.S. Patent No. 6,149,441; hereinafter Pellegrino), further in view of Lee et al. (U.S. Patent No. 6,064,856); hereinafter Lee).**

The combination of Cannon and Pellegrino discloses a system for delivering an educational program to a remote location, while providing prompting means during the educational program. Neither reference explicitly describes a bookmark storage means. However, Lee teaches a system for delivering an educational program, wherein a participant may stop the educational program and record the time-indexed position in a bookmark storage means (column 6, lines 42-47). In view of Lee, it would have been obvious to a person of ordinary skill in the art to modify the delivery of educational program described in the combination of Pellegrino and DeLaHuerga, by providing a bookmark storage means, thereby allowing a participant to stop the delivery of the educational program while allowing him/her to continue, at a later time, where he/she left off.

#### *Response to Arguments*

Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

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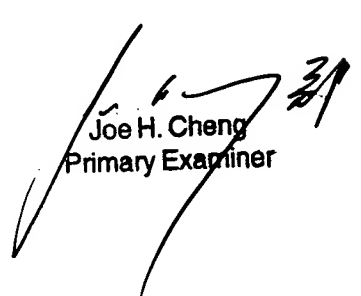
- Clark et al. (USPN 6,149,440) – disclose an educational system wherein a learning session is terminated when a participant has insufficient comprehension of the information provided.
- Weyer (USPN 6,024,572) - discloses an educational system wherein a gaming session is suspended until a participant provides a proper response to a prompt.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is 703-305-5490. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on 703-308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CS

  
Joe H. Cheng  
Primary Examiner